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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

PAULY JAIL BUILDING COMPANY, a Corporation, and SECURITY PRODUCTS COMPANY, a Corporation,
Petitioners and Appellees Below,

vs.

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, an Unincorporated Association, et al.,
Respondents and Appellants Below.

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Eighth Circuit

and

BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Eighth Circuit.

To the Hon. Charles Evans Hughes, Chief Justice of the United States Supreme Court, and Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully show:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is a suit in equity brought by the petitioners herein to enjoin the carrying on of an allegedly unlawful course of conduct. The petitioner Pauly Jail Building Company is engaged in the business of fabricating jail equipment, including iron cells, jail doors, locks, window bars, and the

like. It also manufactures steel window frames, and the petitioner Security Products Company acts as sales and distribution agent of the Pauly Company in respect to the steel window frame. The factory of the Pauly Company is located in the City of St. Louis and petitioners obtain contracts for the fabrication, and in some instances for the erection, of their product in many parts of the United States. Very few other companies are engaged in a similar business.

During the early part of 1938 there was in force and effect an agreement between the Pauly Company and the respondent Union embodying various terms and conditions of employment, by which the company recognized the Union as the exclusive collective bargaining agent for its production workers employed at the company's plant in St. Louis (Rec. p. 83). That contract expired by its terms in May, 1938, and negotiations for the renewal of such agreement were carried on intermittently from that time until September, 1938. On September 22, 1938, following the failure of the parties to agree on terms for a new contract, a strike of the production workers of this company was called (Rec. p. 42). The plant was shut down from that time until November 30, 1938. In November and December, 1938, the various striking employees of the company were invited to return to their old jobs, and from November 30, 1938, until January 25, 1939, a majority of the striking employes returned to their jobs (Rec. pp. 42, 43). During all this time and after, negotiations were carried on between the parties for settlement of the strike, but the parties were never able to have a meeting of minds.

Although other matters were in dispute between the parties, the subject of the greatest amount of controversy was the demand of Union for a closed union shop (Rec. p. 41). The company consistently refused to enter into an agreement with the Union making union membership a condition

of employment for the reason that the company would not compel employees to be or remain members of a union against their will. The Union continued to press its demand for a closed union shop and was still demanding that condition at the time this suit was instituted in the District Court. During the latter part of 1938 and continuing through the early part of 1939, until the commencement of this suit, the respondents carried on a boycott among the customers of petitioners and the contractors from whom the petitioners were seeking awards for work. This boycott took the form of letters, telegrams and communications to customers and contractors with whom petitioners did business and with divisions of the United States Government from whom the petitioners were likely to obtain awards of contracts based upon bids for work submitted by the petitioners. Such communications in substance called upon the recipients thereof to discontinue business dealings with the petitioners and were based upon the representation that petitioners were refusing to recognize union labor and to enter into a union agreement with the respondent Union (Rec. p. 44). Some of these communications were sent after January 25, 1939, and therefore after a majority of the striking employees had broken away from the Union and returned to their jobs (Rec. p. 44). They thereby, according to the contention of the petitioners, fraudulently misrepresented to the recipients of such communications that the petitioners could legally enter into a closed union shop agreement with the respondent Union.

Since a majority of the striking employees had returned to work and thereby repudiated the Union's representation of them, the respondents could not, according to their contention, enter into an agreement for a closed shop with a union which represented only a minority of the employees in the given unit without violating the National Labor Relations Act, Title 29, U. S. C. A., Secs. 151-166, Sections 8

and 9. Respondent Union had not only prevented petitioners from obtaining contracts to supply jail equipment in instances where their bids were low, but they also were successful in interrupting the erection of petitioners' equipment on various jobs which were in the process of erection (Rec. p. 45). Petitioners therefore charged the respondents with attempting to compel the petitioners to violate the National Labor Relations Act, Sections 8 and 9, and with engaging in and carrying on an unlawful conspiracy to interfere with and restrain the petitioners' interstate trade and commerce, in violation of the Sherman Act as amended by the Clayton Act. In the petitioners' bill of complaint before the District Court they brought themselves within the provisions of the Norris-La Guardia Act, Title 29, U. S. C. A., Secs. 101-115, by complying with all requirements, procedural and otherwise. After due notice and a hearing at which it was stipulated by the parties that the hearing should constitute the final trial on the merits of the case (Rec. p. 29), the District Court entered a permanent injunction against the respondents.

Such injunction, in substance, prohibited the respondents from representing to anyone that petitioners are unfair because of their refusal to enter into a collective bargaining agreement with respondents; from urging others to refuse to work either for respondents or other concerns having business relations with petitioners on the ground that they should or should not have made a collective bargaining agreement with respondents; from notifying any person of an intention not to work for petitioners because of their refusal to make a collective bargaining agreement, and from making any agreement with anyone not to engage in work for petitioners or others when such agreement in any manner involves or is based upon the representation that petitioners should make a collective bargaining agreement with respondents (Rec. pp. 54-55). Thus the District

Court in granting the injunction limited the relief to the narrow limits permitted by the Norris-La Guardia Act, according to the contention of petitioners. The District Court found itself limited by, and its jurisdiction proscribed by, the Norris-La Guardia Act, and, accordingly, restricted the scope of the relief granted to activities of the respondents involving fraudulent misrepresentations in respect to the petitioners' ability to make a closed shop collective bargaining agreement with respondents (Rec. p. 5). The District Court's decree was supported by appropriate findings of fact and conclusions of law.

The respondents duly perfected their appeal from the District Court's judgment and decree to the United States Circuit Court of Appeals for the Eighth Circuit, which Court reversed the decree of the District Court.

The main question involved on said appeal was whether or not the exceptions set forth in the Norris-La Guardia Act from the restrictions and limitations upon the jurisdiction and powers of district courts to grant injunctions in labor disputes in respect to matters involving fraud relate to conduct of the sort engaged in by the respondents in this case. On this point the United States Circuit Court of Appeals held that the conduct of the respondents was not such fraudulent conduct as was intended to be left outside the limitations of the Norris-La Guardia Act, and such decision materially affected the determination of said appeal. Other points of importance, likewise bearing upon the determination of the case, were raised and decided by the United States Circuit Court of Appeals.

II.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

A. The decision of the Circuit Court of Appeals as to the scope of the Norris-La Guardia Act, holding that the provisions eliminating fraudulent conduct from the limitations of the Norris-La Guardia Act did not relate to the conduct found to have been engaged in by the respondents is an erroneous decision of an important question of general law.

B. The decision of the Circuit Court of Appeals as to the scope of the Norris-La Guardia Act, holding that the provisions eliminating fraudulent conduct from the limitations of the Norris-La Guardia Act did not relate to the conduct found to have been engaged in by the respondents, involves an important question of federal law which has not been but should be settled by this Court.

C. The decision of the Circuit Court of Appeals as to the scope of the Norris-La Guardia Act, holding that the provisions eliminating fraudulent conduct from the limitations of the Norris-La Guardia Act did not relate to the conduct found to have been engaged in by the respondents, is a decision of a federal question in conflict with applicable decisions of this Court.

D. The decision in the concurring opinion of Circuit Judge Woodruff of the Circuit Court of Appeals that the District Court had no jurisdiction of this case is an erroneous decision of an important question of general law.

E. The decision in the concurring opinion of Circuit Judge Woodruff of the Circuit Court of Appeals that the District Court had no jurisdiction of this case involves an important question of federal law which has not been, but should be, settled by this Court.

F. The great importance of the Norris-La Guardia Act, the National Labor Relations Act and the Sherman and Clayton Acts to the business world and the need of an authoritative and elucidating decision upon the applicability of said statutes to the issues in this case.

Wherefore, your petitioners pray that a writ of certiorari under the seal of this court directed to the United States Circuit Court of Appeals for the Eighth Circuit commanding said Court to certify and send to this court a full and complete transcript of the record and proceedings of the said Circuit Court of Appeals had in the case numbered and entitled on its docket "No. 11,644, International Association of Bridge, Structural and Ornamental Iron Workers, an unincorporated association et al., Appellants, v. Pauly Jail Building Company, a corporation, et al., Appellees," to the end that this cause may be reviewed and determined by this Court, as provided for by the statutes, and that the judgment herein of said Circuit Court of Appeals be reversed by the Court and for such further relief as to this Court may seem proper.

Dated June 14, 1941.

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